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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,945	07/23/2001	Dan Kikinis	P1544D1	8414

24739 7590 05/05/2006

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PO BOX 187
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EXAMINER

WINDER, PATRICE L

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/911,945

Applicant(s)

KIKINIS, DAN

Examiner

Patrice Winder

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-10, 13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-10, 13-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 8-9 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Mendelson et al., USPN 5,754,783 (hereafter referred to as Mendelson).

3. Regarding claims 8 and 13, Mendelson taught a broadband data transmission system (abstract) comprising:

a high priority queue reserved for data entities requiring that data entities be transmitted in a successive fashion at or above a minimum rate to insure no interruptions (column 2, lines 50-53, 63-67, column 6, lines 50-54);

a lower priority data entity queue (column 6, lines 50-54); and

control routines adapted for dividing large data entities in the lower priority queue into multiple smaller data entities of a size that may be interspersed with the transmission of data entities from the high priority queue without causing the rate of transmission of the high priority entities to fall below the minimum rate (column 6, lines 23-26, column 8, lines 1-19).

4. Regarding dependent claim 9, Mendelson taught the transmission system comprises a satellite transmission system (column 4, lines 28-31).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mendelson in view of Liebowitz et al., USPN 5,812,545 (hereafter referred to as Liebowitz).
7. Regarding dependent claims 10 and 14, Mendelson taught upon dividing a large data entity into multiple smaller data entities for transmission, the control routines enable reassembling the multiple data entities back into the undivided larger data entity (column 1, lines 37-38, column 2, lines 12-15). Mendelson does not specifically teach preparing a division key for transmission to a user, the division key adapted to aid in reassembling the multiple data entities back into the undivided larger data entity. However, Liebowitz taught preparing a division key for transmission to a user, the division key adapted to aid in reassembling the multiple data entities back into the undivided larger data entity (column 4, lines 58-63). It would have been obvious to one of ordinary skill in the art at the time the invention was made that incorporating Liebowitz's division key in Mendelson's system for interleaving secondary data would

have increased system robustness. The motivation would have been to reduce the complexity associated with decoding the transmitted stream.

Response to Arguments

8. Applicant's arguments filed February 28, 2006 have been fully considered but they are not persuasive.

9. Applicant argues – “Applicant argues that Mendelson fails to teach a system for transmitting packets on a broadband network, as claimed.”

a. In response to applicant's arguments, the recitation “broadband network” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

b. Mendelson taught an ATM network which is a broadband network on column 4, lines 28-31.

10. Applicant argues – “Applicant teaches in the background portion of the specification that the present invention is an alternative to compression because compression of files is sometimes used as a technique to enable faster download times,

but this expedient requires that the user to have the appropriate software to decompress that particular type of file.”

c. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “as an alternative to compression”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

d. By providing video files in the MPEG format, Mendelson's invention has utility with the most popular format for video files. These video files are in a compressed MPEG format before reaching Mendelson's system. However, Mendelson is not concerned with the compression of video files.

11. Applicant argues – “The Examiner states that Mendelson teaches resizing data packets. Applicant respectfully disagrees.”

e. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “resizing data packets”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

f. According to applicant's claim language, the “data entities” from the higher priority queue are interspersed with “smaller data entities”. Which clearly

correlates to Mendelson's larger packets of primary content interspersed with smaller packets of secondary content. Also, in Mendelson, the "smaller data entities", i.e. padding packets, are formed by dividing "larger data entities", i.e. secondary content in buffer 460, column 6, lines 50-54.

12. Applicant argues – "Applicant argues that the art of Mendelson can never send a larger file in need of resizing because of the PCR limitations of the original received MPEG video stream only allows secondary data of a size equaling the difference between VBR and CBR, and packets are created and generated for this specific size, existing packets are not resized."

g. The "created and generated" packets come from the "large entities" generated by content generator 414 in column 6. The difference between VBR and CBR is not constant, thus, the size of the packets formed are not constant.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

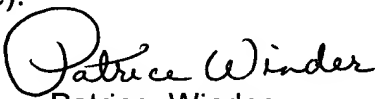
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrice Winder whose telephone number is 571-272-3935. The examiner can normally be reached on Monday-Friday, 10:30 am-7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Patrice Winder
Primary Examiner
Art Unit 2145

April 27, 2006